

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**B.K., a minor, by and through his parents
and next friends, HENRY and DORA KING,**

Plaintiffs,

vs.

No. CIV 08-0249 RB/WDS

**THE AZTEC MUNICIPAL PUBLIC SCHOOLS,
THE SCHOOL BOARD OF THE AZTEC PUBLIC
SCHOOLS, DR. LINDA PAUL, in her official capacity
as Superintendent of the Aztec Municipal Public
Schools, and MR. BRAD CALVERT, in his official
capacity as Director of Special Education of the
Aztec Municipal Public Schools,**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came before the Court on Defendants' Motion for Partial Summary Judgment, filed April 7, 2009. Jurisdiction is founded upon 28 U.S.C. § 1331. Having considered the submissions of the parties, relevant law, and being otherwise fully advised, Defendants' Motion for Partial Summary Judgment is **DENIED WITHOUT PREJUDICE**.

I. Background.

On August 24, 2007, Plaintiffs Henry and Dora King, on behalf of their minor child, Plaintiff B.K., filed a Due Process Complaint with the New Mexico Public Education Department, alleging that the Aztec Municipal School District violated the Individuals with Disabilities Education Act (hereinafter "IDEA") by denying B.K. a free appropriate education. A due process hearing was held on December 4-5, 2007, and the hearing officer issued her final decision on January 7, 2008. On February 5, 2008, Plaintiffs filed a civil action in state court, pursuing *inter alia* judicial review of the hearing officer's January 7, 2008 decision in the IDEA administrative proceedings. Defendants

removed this lawsuit to federal court on March 7, 2008. On May 7, 2008, Defendants filed their Motion for Partial Summary Judgment, appending a copy of the hearing officer's final decision in the administrative proceedings. Defendants argue that the hearing officer's decision is considered *prima facie* correct and is supported by credible evidence. Plaintiffs failed to respond in a timely manner.

II. Standard of Review.

IDEA claims do not fit into the typical summary judgment standard of "no genuine issue of material fact." *See L.B. ex rel. K.B. v. Nebo School Dist.*, 379 F.3d 966, 974 (10th Cir. 2004). Instead, a district court applies a modified *de novo* standard in reviewing a hearing officer's decision under the IDEA. *Murray v. Montrose County Sch. Dist.*, 51 F.3d 921, 927 (10th Cir. 1995). Under this modified *de novo* standard of review, a district court must receive and review evidence contained in the administrative record, hear additional evidence at the request of a party, and make an independent determination of what relief, if any, should be granted based on the preponderance of the evidence. 20 U.S.C. § 1415(i)(2)(C). Moreover, the requirement that the district court "receive the records of the administrative proceedings" carries the implied requirement that "due weight" should be given the hearing officer's findings of fact, which are considered *prima facie* correct. *L.B. ex rel. K.B.*, 379 F.3d at 974; *Murray*, 51 F.3d at 927.

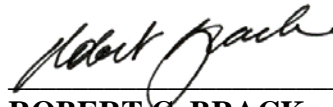
III. Discussion.

In order to fulfill its obligation to conduct a modified *de novo* review of the hearing officer's decision, under the IDEA, the Court must first "receive the records of the administrative proceedings." 20 U.S.C. § 1415(i)(2)(C)(i). The records of the administrative proceedings include the hearing officer's final decision, a transcript of the proceedings, and all evidentiary exhibits presented at the proceedings. *See Murray*, 51 F.3d at 927. At present, only

the hearing officer's final decision is before the Court. Without a full record of the administrative proceedings, the Court is unable, under the statute, to grant the relief that Defendants seek. *See* 20 U.S.C. § 1415(i)(2)(C).

WHEREFORE,

IT IS ORDERED that Defendants' Motion for Partial Summary Judgment is **DENIED WITHOUT PREJUDICE**.

A handwritten signature in black ink, appearing to read "Robert C. Brack", is written over a horizontal line.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE